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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,419	09/25/2003	Hirotsugu Muratsu	242941US3	5063
22850	7590	11/02/2005		
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
			EXAMINER KIM, JOHN	
			ART UNIT 3733	PAPER NUMBER

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/669,419	MURATSU, HIROTSUGU	
	<b>Examiner</b>	<b>Art Unit</b>	
	John Kim	3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-10 is/are rejected.
- 7) ☒ Claim(s) 6 and 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informalities: the disclosure has several grammatical and spelling errors. For example, in the last sentence of the specification (pg 20 line 30) "sprints" is misspelled.

Appropriate correction is required.

### ***Claim Objections***

Claims 1 - 10 are objected to because of the following informalities: the claims have several grammatical and spelling errors. For instance, claim 1 states "an locking member" where "an" should be replaced with "a." Also claim 4 repeats the phrase "an indicating member" back to back. Furthermore, claims 6 and 7 are objected to because of the following informalities: claims 6 and 7 state a "device" where both claims depend from claim 5 which states "an apparatus". Appropriate corrections are required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Ashby et al. (US Pat 5,911,723 June 15, 1999).

In regards to claims 1 and 5, Ashby teaches of an apparatus having a base (1), a first engaging member (3), a moving body (4), second engaging member (5), moving member (33), driving member (17), a locking member (18), a first indicator (33), and a second indicator (9 and 11). Please see Ashby figure 3. Ashby also teaches a second tissue engaging means on a rotatable shaft, thus being able to rotate on the axis substantially parallel with respect to the osteotomized surface at the femoral distal end (column 4 lines 23-25). Lastly, Ashby teaches of using femoral component. He discusses the prosthetic components to be positioned at 90 degrees to the coronal and sagittal planes (column 3 lines 54-67). He also points out the importance of maintaining the balance of the patello-femoral articulation, where the size of the femoral component is based on the correct anterior cut. (column 7 lines 65-67)

In regards to a portion of claims 1 and 5 and all of claims 2 and 8, Ashby teaches an apparatus with a driving and locking members performed by a rack and pinion geared drive with a ratchet lever and ratchet wheel. This allows the tissue engaging means to be displaced from each other. The tissue engaging means will not move towards each other without releasing the ratchet lever (column 4 lines 40-53).

For claims 3 and 9, Ashby teaches that the shaft is provided with graduations to measure the gap distance (column 5 lines 26-31).

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With regards to claims 4 and 10, Ashby teaches his apparatus of having a ligament balance meter read from a scale on a plate (columns 6 lines 52-62 and column 6 line 66- column 7 line4).

***Allowable Subject Matter***

Claims 6 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.

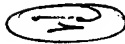
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kim whose telephone number is (571) 272-2817. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JK



  
EDUARDO C. ROBERT  
PRIMARY EXAMINER